

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEON EUGENE SIMMS,

Plaintiff,

v.

STEVEN BUCHANAN, et al.,

Defendants.

Case No. 3:25-cv-05342-DGE-TLF

ORDER TO SHOW CAUSE OR AMEND THE COMPLAINT

This matter is before the Court on plaintiff's filing of a civil rights complaint.

Plaintiff, Keon E. Simms, is unrepresented by counsel and seeks *in forma pauperis* ("IFP") status in this matter. Dkts. 1, 1-1. Considering deficiencies in the complaint discussed below, the undersigned will not direct service of the complaint at this time.

Plaintiff is ordered to either show cause why this cause of action should not be dismissed, or file an amended complaint, on or before **July 7, 2025**.¹

BACKGROUND

Plaintiff states he is a pretrial detainee at Pierce County Jail ("PCJ"); he commenced this action on April 23, 2025. Dkt. 1. Plaintiff names as defendants S. Buchanan, Sergeant at PCJ and Place, Sergeant/Courts Officer at PCJ. Dkt. 1-1. Plaintiff alleges defendants violated his right to due process and right to access the

¹ The Court will defer ruling on plaintiff's motion to proceed IFP pending plaintiff's response to this order to show cause.

1 courts by refusing to allow him to testify against his previous criminal attorney at a
 2 hearing before the Washington State Bar Association on February 3, 2025. *Id.*

3 Plaintiff alleges that defendants' refusal to allow him to testify at the Bar
 4 Association hearing "may jeopardize his claim to ineffective assistance of counsel in a
 5 later appeal in [his] criminal case." *Id.* at 6. Plaintiff states he is seeking money
 6 damages as relief. *Id.* at 9.

7 DISCUSSION

8 A. Relevant Legal Standard

9 The Court must dismiss the complaint of a prisoner proceeding *in forma pauperis*
 10 "at any time if the [C]ourt determines" that the action: (a) "is frivolous or malicious"; (b)
 11 "fails to state a claim on which relief may be granted" or (c) "seeks monetary relief
 12 against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2); 28 U.S.C.
 13 § 1915A(a), (b). A complaint is frivolous when it has no arguable basis in law or fact.
 14 *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984), *abrogated on other grounds*
 15 by *Neitzke v. Williams*, 490 U.S. 319 (1989).

16 Before the Court may dismiss the complaint as frivolous or for failure to state a
 17 claim, it "must provide the [prisoner] with notice of the deficiencies of his or her
 18 complaint and an opportunity to amend the complaint prior to dismissal." *McGuckin v.*
 19 *Smith*, 974 F.2d 1050, 1055 (9th Cir. 1992), *overruled on other grounds by WMX*
 20 *Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997); *see also Sparling v. Hoffman*
 21 *Constr., Co., Inc.*, 864 F.2d 635, 638 (9th Cir. 1988); *Noll v. Carlson*, 809 F.2d 1446,
 22 1449 (9th Cir. 1987). Leave to amend need not be granted "where the amendment
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1 would be futile or where the amended complaint would be subject to dismissal." *Saul v.*
2 *United States*, 928 F.2d 829, 843 (9th Cir. 1991).

3 To state a claim under 42 U.S.C. § 1983, a complaint must allege: (1) the
4 conduct complained of was committed by a person acting under color of state law, and
5 (2) the conduct deprived a person of a right, privilege, or immunity secured by the
6 Constitution or laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981).
7 Section 1983 is the appropriate avenue to remedy an alleged wrong only if both of these
8 elements are present. *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985).

9 B. Access to Courts

10 Plaintiff alleges defendants violated his right of access to the courts by refusing
11 to allow him to testify against his previous criminal attorney at a hearing before the
12 Washington State Bar Association. He alleges his inability to testify at the hearing may
13 jeopardize his claim to ineffective assistance of counsel in a later appeal in his criminal
14 case.

15 Prisoners have a "fundamental constitutional right of access to the courts."
16 *Bounds v. Smith*, 430 U.S. 817, 828 (1977) overruled on other grounds by *Lewis v.*
17 *Casey*, 518 U.S. 343 (1996). The right of access to the courts applies to non-frivolous
18 direct criminal appeals, habeas corpus proceedings, and 42 U.S.C. § 1983 cases. *Lewis*
19 *v. Casey*, 518 U.S. 343 at 353 n. 3, 354–55 (1996). Furthermore, the claim is limited to
20 a prisoner's ability to access courts and does not extend to the ability to discover legal
21 claims or effectively litigate claims once in court. See *Lewis*, 518 U.S. at 354–55;
22 *Cornett v. Donovan*, 51 F.3d 894, 898 (9th Cir. 1995) ("[W]e conclude the Supreme
23 Court has clearly stated that the constitutional right of access requires a state to provide

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1 a law library or legal assistance only during the pleading stage of a habeas or civil rights
 2 action.”).

3 In addition, a plaintiff must show some actual injury resulting from a denial of
 4 access to the court in order to allege a constitutional violation. See *Lewis*, 518 U.S at
 5 349. To meet the actual injury requirement, a plaintiff must demonstrate “actual
 6 prejudice with respect to contemplated or existing litigation, such as the inability to meet
 7 a filing deadline or to present a claim.” *Id.* at 348; *Phillips v. Hurst*, 588 F.3d 652, 655
 8 (9th Cir. 2009). “Failure to show that a ‘nonfrivolous legal claim has been frustrated’ is
 9 fatal to [an access to courts] claim.” *Alvarez v. Hill*, 518 F.3d 1152, 1155 n.1 (9th Cir.
 10 2008) (quoting *Lewis*, 518 U.S. at 353 & n.4).

11 Here plaintiff fails to allege facts to show his inability to testify at his former
 12 attorney’s disciplinary hearing frustrated a non-frivolous direct criminal appeal, habeas
 13 corpus proceeding, or § 1983 case. *Lewis*, 518 U.S. at 353 n. 3, 354–55. That is, he
 14 does not allege that he has been prevented from accessing the court to litigate a direct
 15 appeal, habeas corpus proceeding or § 1983 case.

16 Furthermore, plaintiff alleges his inability to testify at the hearing *may* jeopardize
 17 his claim to ineffective assistance of counsel in a later appeal in his criminal case. But,
 18 as discussed below, it appears plaintiff is a pretrial detainee and has not yet been
 19 convicted of the crimes with which he is charged. Thus, plaintiff fails to allege sufficient
 20 facts to show an actual injury.

21 Thus, as alleged, plaintiff’s complaint fails to adequately state a claim for denial
 22 of access to the courts.

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1 C. *Younger* Abstention

2 Plaintiff's claims also appear to relate to his ongoing criminal proceedings and as
 3 such would likely be barred by the *Younger* abstention doctrine. *Younger v. Harris*, 401
 4 U.S. 37 (1971). Generally, federal courts will not intervene in a pending criminal
 5 proceeding absent "extraordinary circumstances, where the danger of irreparable harm
 6 is both great and immediate." *Younger*, 401 U.S. at 45, 46. Under *Younger*, courts
 7 should abstain from interfering with pending state judicial proceedings when: "(1) there
 8 is an ongoing state judicial proceeding; (2) the proceeding implicates important state
 9 interests; (3) there is an adequate opportunity in the state proceedings to raise
 10 constitutional challenges; and (4) the requested relief seeks to enjoin or has the
 11 practical effect of enjoining the ongoing state judicial proceeding." *Arevalo v. Hennessy*,
 12 882 F.3d 763, 765 (9th Cir. 2018) (alterations adopted) (citation and internal quotation
 13 marks omitted). Courts may *sua sponte* consider whether *Younger* abstention is
 14 appropriate. *San Remo Hotel v. City & Cnty. of San Francisco*, 145 F.3d 1095, 1103 n.
 15 5 (9th Cir. 1998); see *Younger*, 401 U.S. at 40–41.

16 Here, plaintiff indicates that he is a pretrial detainee and his criminal proceedings
 17 are currently pending. Dkt. 1-1. Court records show that plaintiff's state court criminal
 18 cases are ongoing and are currently set for a jury trial on June 25, 2025. *Id.* See *State*
 19 *v. Simms*, Pierce County Superior Court Nos. 19-1-04047-7, 21-1-02032-0, 22-1-00378-
 20 4, 22-1-00382-2, 22-1-0038703, 22-1-01184-1 (available at [Pierce County Superior](#)
 21 [Court Criminal Case 19-1-04047-7](#), [Pierce County Superior Court Criminal Case 21-1-](#)
 22 [02032-0](#), [Pierce County Superior Court Criminal Case 22-1-00378-4](#), [Pierce County](#)
 23 [Superior Court Criminal Case 22-1-00382-2](#), [Pierce County Superior Court Criminal](#)

1 Case 22-1-00387-3, [Pierce County Superior Court Criminal Case 22-1-01184-1](#), last
2 visited on June 2, 2025). Thus, the proceedings here involve a criminal prosecution
3 implicating important state interests. Furthermore, there is nothing to indicate plaintiff
4 would be prevented from raising in his state court criminal case the same issues he
5 raises in his complaint in this matter. Plaintiff also fails to present sufficient facts in his
6 complaint to show extraordinary circumstances where the danger of irreparable harm is
7 both great and immediate.

8 As plaintiff brings claims here that would unduly interfere with the state criminal
9 proceeding, the Court should abstain from deciding his claims pursuant to *Younger*.

10 CONCLUSION

11 Due to the deficiencies described above, the Court will not serve the complaint. If
12 plaintiff intends to pursue this action, he must file an amended complaint to cure, if
13 possible, the deficiencies noted herein, **on or before July 7, 2025**. Within the amended
14 complaint, plaintiff must write a short, plain statement telling the Court: (1) the
15 constitutional or statutory right plaintiff believes was violated; (2) the name of the person
16 who violated the right; (3) exactly what the individual did or failed to do; (4) how the
17 action or inaction of the individual is connected to the violation of plaintiff's constitutional
18 rights; and (5) what specific injury plaintiff suffered because of the individual's conduct.
19 See *Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976). Each claim for relief must be
20 simple, concise, and direct.

21 Plaintiff shall present the amended complaint on the form provided by the Court.
22 The amended complaint must be legibly rewritten or retyped in its entirety and contain
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1 the same case number. It may not incorporate any part of the original complaint by
2 reference.

3 The amended complaint will act as a complete substitute for the original
4 complaint, and not as a supplement. Any fact or cause of action alleged in the original
5 complaint that is not alleged in the amended complaint is waived. *Forsyth v. Humana,*
6 *Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *overruled in part on other grounds*, *Lacey v.*
7 *Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012).

8 The Court will screen the amended complaint to determine whether it states a
9 claim for relief cognizable under 42 U.S.C. § 1983. If the amended complaint is not
10 timely filed or fails to adequately address the issues raised herein, the undersigned will
11 recommend dismissal of this action.

12 The Clerk is directed to send plaintiff the appropriate forms for filing a 42 U.S.C.
13 § 1983 civil rights complaint and for service, a copy of this Order and the *Pro Se*
14 Information Sheet. The Clerk is further directed to re-note plaintiff's motion to proceed
15 IFP (Dkt. 1) to **July 7, 2025**.

16 Dated this 4th day of June, 2025.

Chelsea L. Fricke

Theresa L. Fricke
United States Magistrate Judge

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